

**REMARKS**

Claims 1-4 and 10 are amended. Claim 9 was previously canceled. Now pending in the application are claims 1-8 and 10, of which claims 1 and 5 are independent. Claims 5-8 are previously withdrawn. The following statements address all the ground for rejection and place the pending application in condition for allowance.

**Rejection of Claims under 35 U.S.C. § 103**

Claims 1-4 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0136942 to Kashiwagi (hereafter “Kashiwagi”) in view of Japanese Patent Application Publication No. 2002-33110A to Kobayashi et al. (hereafter “Kobayashi”).

The Examiner indicates that now deleted claim language regarding the control device closing the discharge valve and operating the fuel pump upon start-up of the fuel cell is not given patentable weight because the Examiner considers the language as reciting functional limitations in an apparatus claim.

Applicants amend claim 1 to recite *control means for closing the discharge valve and operating the fuel cell pump upon start of the fuel cell*. Amended claims 1-4 and 10 are “means-plus-function” claims invoking 35 U.S.C. § 112, ¶ 6. A claim limitation will be presumed to invoke 35 U.S.C. § 112, ¶ 6, if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase “means for” or “step for;”
- (B) the “means for” or “step for” must be modified by functional language; and
- (C) the phrase “means for” or “step for” must not be modified by sufficient structure, material, or acts for achieving the specified function. *See* MPEP § 2181.

Applicants respectfully submit that the amended claims meet the 3-prong analysis outlined in MPEP § 2181.

Applicants respectfully submit that the combination of the Kashiwagi reference and the Kobayashi reference do not teach or suggest *control means for closing the discharge valve and operating the fuel cell pump upon start of the fuel cell*, as recited in claim 1.

The Examiner asserts that the Kashiwagi reference teaches a control device that is operatively connected to the fuel pump. *See* Office Action, page 3, last line. The Examiner notes that the Kashiwagi reference does not teach a discharge valve for discharging the fuel off-gas from the fuel off-gas circulation path or a control device operatively connected to the discharge valve. *See* Office Action, page 4, ¶ 1. The Examiner relies on the Kobayashi reference for the teaching of a discharge valve for discharging the fuel off-gas from the fuel off-gas circulation path or a control device operatively connected to the discharge valve. *See* Office Action, page 4, ¶ 2. However, the combination of the Kashiwagi reference and the Kobayashi reference do not teach or suggest *control means for closing the discharge valve and operating the fuel cell pump upon start of the fuel cell*, as recited in claim 1.

Thus, Applicants respectfully submit that the Kashiwagi reference, in view of the Kobayashi reference, fails to teach or suggest each and every element of claim 1. Claims 2-4 and 10 depend from claim 1 and, as such incorporate each and every element of claim 1.

In light of the foregoing arguments, Applicants respectfully submit that the Kashiwagi reference, in view of the Kobayashi reference, fails to teach or suggest each and every element of claims 1-4 and 10. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 1-4 and 10 under 35 U.S.C. §103(a) and pass the claims to allowance.

**CONCLUSION**

In view of the above comments, Applicants believe the pending application is in condition for allowance and urge the Examiner to pass the claims to allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. SIW-069RCE. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: May 5, 2008

Respectfully submitted,

By /Anthony A. Laurentano/  
Anthony A. Laurentano  
Registration No.: 38,220  
LAHIVE & COCKFIELD, LLP  
One Post Office Square  
Boston, Massachusetts 02109-2127  
(617) 227-7400  
(617) 742-4214 (Fax)  
Attorney/Agent For Applicant